

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

ERNEST WARD

PLAINTIFF

VS.

CIVIL ACTION NO. 3:06CV61LN

MISSISSIPPI DEPARTMENT OF CORRECTIONS

DEFENDANT

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

The Plaintiff, Ernest Ward, has filed an application for authority to proceed *in forma pauperis* in the above styled case in which he alleges that the Defendant has discriminated against him on the basis of his race.

After a review of the sworn financial affidavit filed with this court, it is the opinion of the undersigned Magistrate Judge that the Plaintiff is not indigent under the law. He is still employed by the Mississippi Department of Corrections and has a regular annual income of \$27,660.00. He also owns a house and two vehicles. For this reason, it is the opinion of the undersigned that the Plaintiff should not be allowed to proceed *in forma pauperis*.

Section 28 U.S.C. §1915(a) is intended to provide access to federal courts for plaintiffs who lack the financial resources to pay any part of the statutory filing costs. *See Williams v. Estelle*, 681 F.2d 946 (5th Cir. 1982); *Prows v. Kastner*, 842 F.2d 138 (5th Cir. 1988). This court, in exercising its discretion, has considered the following factors:

Is the plaintiff barred from the federal courts by reason of his impecunity? *Souder v. McGuire*, 516 F.2d 820 (3rd Cir. 1975);

Is access to the courts blocked by the imposition of an undue hardship? *Startti v. United States* 415 F.2d 1115 (5th Cir. 1969); and,

Is the plaintiff forced to contribute his last dollar, or render himself destitute to prosecute his claim? *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 337 (1941).

Considering the circumstances of the Plaintiff, the undersigned finds that he could pay filing costs without undue financial hardship. Hence, it is the recommendation of the undersigned that his request to proceed *in forma pauperis* be denied and that he be given thirty days from the date of this report to pay filing fees. The Plaintiff should be advised and warned that his failure to pay filing fees could result in the dismissal of his suit.

The Plaintiff is hereby notified that failure to file written objections to the findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from challenging such findings and recommendations on appeal. 28 U.S.C. §636, *Douglass v. United Services Auto. Ass'n.*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

This the 29th day of March, 2006.

S/James C. Sumner

UNITED STATES MAGISTRATE JUDGE